CONSTRUCTIVE NOTICE. — The purchaser of the *res* of a trust with notice takes subject to the trust. And notice may be actual or constructive. In the case of *First National Bank* v. *Broadway Bank*, New York Law Journal, Oct. 12, 1898, a pledgee of stock certificates knew that his pledgor was a trustee but did not know, though he could easily have ascertained, that the pledge was a violation of the trust. After default by the pledgor, he put the certificates up at public sale and bought them in himself. The New York Court of Appeals decided that, though he had no direct information, yet he had constructive notice of the trust; for the facts were such as, in reason, would have put him upon inquiry which would have resulted in discovering the violation by the trustee. The decision seems correct. The same rule would probably be adopted in most of the American courts, and is the law in England since the Conveyancing Act of 1882. It is not likely to depart a great way from substantial justice and is, perhaps, no longer to be quarrelled with.

Yet it is too handy and sweeping a statement, — according to it a mere blunderer who failed to investigate where a reasonable man would have investigated, has constructive notice of what he would have found. But the whole doctrine of notice seems to rest on the idea of fraud, that a purchase with notice is not *bona fide*. The blunderer has done no fraud, — where is the equity against him? The general doctrine should be applied as consistently here as it is in regard to transfers of negotiable paper. If it be carried out logically, the cases of constructive notice may, as suggested by Vice-Chancellor Wigram in *Jones* v. *Smith*, 1 Hare, 43, 55, be divided into three classes: cases where the purchaser's agent had notice, cases where there was wilful deafness to notice, cases where the purchaser had notice of some incumbrance on the ownership of his vendor but failed to make proper inquiry into the nature of the incumbrance. In the last class there seems a disregard of the rights of possible *cestuis* so reckless that it is inconsistent with a *bona fide* purchase. Is is clear that the facts of the principal case showed constructive notice according to this class, as in *Shaw* v. *Spencer*, 100 Mass. 382; *Duncan* v. *Jaudou*, 15 Wall. 165. In the course of a long series of decisions the New York courts, which at first strictly adhered to the test that there must be taint of fraud, have gradually lost sight of that fundamental proposition. The resultant error is, perhaps, one of definition rather than substance; yet the principle is blurred and the juryman's standard of the "reasonable man" introduced into equity.

RECENT CASES.

AGENCY — UNAUTHORIZED CONTRACT — RATIFICATION. — Plaintiffs' broker, without disclosing his principals, sold certain stock for them to defendants, at a price unauthorized by plaintiffs. A month later he tendered the certificates of stock, but defendants refused to take them. *Held*, that plaintiffs cannot hold defendants on the agreement, because, the contract being unauthorized, defendants could not have held plaintiffs. *Clews* v. *Jamieson*, 89 Fed. Rep. (Cir. Ct., Ill.).

The court seems to ignore the doctrine of ratification, and on the statement of facts it is impossible to say when plaintiffs decided to enforce the contract. The tender of the stock certificates by the broker so long after the sale would indicate that probably plaintiffs had then elected to ratify, and gave the broker the certificates to convey them to defendants. If they did so elect before defendants withdrew their assent to the con-

tract, both parties, according to the great weight of authority, would thenceforth be bound to each other. Story, Agency, 9th ed., § 244, 445. If, however, plaintiffs had not elected to affirm at the time defendants first refused to proceed, the case presents the interesting problem discussed in 9 HARV. LAW REV. 60. On principle it should then be too late for ratification to take effect. See *contra*, *Bolton Partners* v. *Lambert*, 41 Ch. D. 295. The fact that the principal case is one of undisclosed principal should make no difference in the decision.

CARRIERS — LOCATION OF STATION — JURISDICTION. — *Held*, that in the absence of any legislative authority a court of general jurisdiction may compel the location of a union depot, if public convenience so demand. *Concord & Maine R. R.* v. *Boston & Maine R. R.*, 41 Atl. Rep. 263 (N. H.).

It is admitted that the public has a general legal right to demand reasonable accommodation from the carrier. The conflict, one side of which is represented in the principal case, arises over the question as to whether the public has a specific legal right, enforceable by the courts, to have the carrier act in a particular way. It can hardly be said that the decisions which subject the carrier to such liability are sounder, on legal theory, than those which exempt him from it, but the former cases seem best to comport with public policy. Accordingly, on the matter of the establishment of stations, which is but a special aspect of the broader question, it is to be hoped that the principal case will be followed. *People* v. *Chicago, etc. R. R. Co.*, 130 Ill. 175; *State* v. *Republican Valley R. R. Co.*, 17 Neb. 647, *accord*. The opposite view is taken in *Atchison, etc. R. R.* v. *Denver, etc. R. R.*, 110 U. S. 667; *People* v. *New York, etc. R. R. Co.*, 104 N. Y. 58.

CARRIERS — RIGHT TO DISCRIMINATE AGAINST HACKMEN. — A railroad company granted the exclusive privilege of plying the business of hackman upon its premises to one person, and forbade all others the use of its grounds for similar purposes. *Held*, that the regulation was a reasonable one, and an injunction would be granted against any one violating it. *N. Y., N. H. & H. R. R. Co.* v. *Scovill*, 41 Atl. Rep. 246 (Conn.).

In *Old Colony R. R. Co.* v. *Tripp*, 147 Mass. 35, a similar decision was reached, but that case has found support in no other jurisdiction. *McConnell* v. *Pedigo*, 92 Ky. 465. No authorities are cited by the court in the principal case as sustaining the position taken. That reason, as well as authority, is opposed to the decision is shown in *Montana Ry. Co.* v. *Langloris*, 9 Mont. 419. Regulations which discriminate between different hackmen should not be upheld, because they foster monopolies, inconvenience passengers, and permit the carrier to profit unjustly at the expense of the public.

CONFLICT OF LAWS — MARRIAGE ON THE HIGH SEAS. — *Held*, that when parties, simply to avoid the law of their domicile, go by boat outside the three-mile limit and there go through the forms of a marriage, the marriage is void. *Norman* v. *Norman*, 54 Pac. Rep. 143 (Cal., Sup. Ct.). See NOTES.

CONTRACTS — STATUTE OF FRAUDS — PERFORMANCE WITHIN A YEAR. — Defendant received a horse from the plaintiff and agreed orally to keep it a year in return for its use. At the end of the year defendant claimed a lien for keeping the horse. In an action of trover, *held*, that plaintiff can recover. *Martin* v. *Batchelder*, 41 Atl. Rep. 83 (N. H.).

The defendant contended that, as the contract was not to be performed within a year, it came within the section of the Statute of Frauds providing that such contracts should be in writing. However the court held that, as it would have been fully performed within a year had the horse died within that time, the statute does not apply. This is in accord with the rule of interpretation that where by any possibility the contract may be performed within a year, although such a performance is not within the contemplation of the parties, the statute does not apply. This construction was adopted in two early English cases. *Peter* v. *Compton*, Skin. 353; *Anon.*, 1 Salk. 280. Later a contrary result was reached in *Reynolds* v. *Cowper*, Vin. Abr., Tit., Contract and Agreement, 524; but the law was finally settled in accord with the early cases. The same construction has been adopted in this country. *Peters* v. *Inhabitants of Westborough*, 19 Pick. 364. The great majority of contracts, although not intended to be performed within a year, may by some contingency be completed within that time. The rule in the principal case practically annuls the statute in all such cases, but it is generally law.

CRIMINAL LAW — ATTEMPT TO RAPE — PRESUMPTION OF INCAPACITY. — *Held*, that a boy under fourteen years of age may be convicted of an attempt to commit rape. *Davidson* v. *Commonwealth*, 47 S. W. Rep. 213 (Ky.).

The case is contrary to the weight of authority. The English cases and the majority of those in America hold that the law conclusively presumes that a boy under fourteen years of age is incapable of committing rape, and therefore can be convicted neither

of an attempt nor of an assault with intent to commit rape. *Reg.* v. *Phillips*, 8 C. & P. 736; *State* v. *Sam*, Winston, 300. In some American jurisdictions it is held that the presumption of incapacity is rebuttable by evidence of the boy's actual ability. *Williams* v. *State*, 14 Ohio, 222. And in Massachusetts it has been decided that though the boy cannot be convicted of rape, he can be convicted of an assault with intent to commit rape. *Commonwealth* v. *Green*, 2 Pick. 380. This is on the ground that the law does not mean that the boy is actually incapable of committing rape, but that he is too young to be punished for such a serious offence. This is sound reasoning, and the present case, therefore, seems to be correct on principle.

CRIMINAL LAW — CONSTRUCTIVE GRAND LARCENY. — The prosecutor, a mining company, had missed from its reduction works, at various times for several months, small quantities of the product. The defendant was later found with a large quantity in his possession. *Held*, that an indictment for a single grand larceny is proper. *State* v. *Mandich*, 54 Pac. Rep. 516 (Nev.).

Several sheep of several owners were stolen at one time. *Held*, a single offence of grand larceny. *Ackerman* v. *State*, 54 Pac. Rep. 288 (Wyo.). See NOTES.

CRIMINAL LAW — PLEADING. — A statute prohibited the sale of liquor "except as hereinafter provided." In a later clause it was provided that the act did not apply to sales by manufacturers or wholesale dealers in quantities of over five gallons, if made in good faith. *Held*, that an indictment framed on this statute need not negative the exception, since it is contained in a clause separate from the enacting clause. *Commonwealth* v. *Risner*, 47 S. W. Rep. 213 (Ky.).

By the test here laid down it depends entirely upon the location of the excepted matter in the statute whether it must be negatived in the indictment. If the exception is stated in the enacting clause, it must be negatived; but if it is in a separate clause, whether referred to in the enacting clause or not, it need not be negatived. Some authorities make an exception where the separate clause is referred to in the enacting clause. *King* v. *Pratten*, 6 T. R. 559; *Vavasour* v. *Ormrod*, 6 B. & C. 430. The true inquiry, however, seems to be whether the separate clause is to be treated as part of the definition of the offence or was only intended to work an exemption from an already fully stated offence. 1 Bish., Crim. Proc., 4th ed., § 631. To this end it seems that a study of the intrinsic nature of the excepted matter with reference to the whole statute would be necessary to a correct solution of the difficulty. The result in the principal case, therefore, appears to have been reached by a technical rather than a logical test, and, in view of the subject-matter, its correctness seems doubtful. *Hirn* v. *State*, 1 Ohio St. 15; *State* v. *O'Donnell*, 10 R. I. 472.

CRIMINAL LAW — SELF-DEFENCE — BURDEN OF PROOF. — On a criminal prosecution for homicide, *held*, that the defendant must establish a justification of self-defence by a preponderance of the evidence. *State* v. *Ballou*, 40 Atl. Rep. 861 (R. I.).

The decision seems unsound on principle, although it has the support of some authority. *State* v. *Welsh*, 29 S. C. 4; *People* v. *Milgate*, 5 Cal. 127. In a criminal prosecution the State must prove the defendant guilty beyond a reasonable doubt, and yet, under the rule here adopted, he may be convicted although there remains a doubt which he has produced by evidence which raises a question as to his justification, but does not amount to proof of it. The error has arisen from a failure to distinguish between the effect of an affirmative plea in a civil action, and a justification in a criminal prosecution. A defendant in a civil action admits by an affirmative plea that he has injured the plaintiff. But a defendant in a criminal prosecution does not admit the commission of a crime by acknowledging he did the act for which he is held, and the prosecution does not establish his guilt beyond a reasonable doubt, until it disproves to that extent any excuse he may have raised, the existence of which would make him criminally irresponsible. *People* v. *Riordan*, 117 N. Y. 71.

CRIMINAL LAW — STENOGRAPHER IN GRAND JURY ROOM. — The defendant in a criminal case pleaded in abatement that a stenographer had been present in the grand jury room while the evidence was given upon which the indictment was found. On demurrer, *held*, that the plea is bad. *State* v. *Brewster*, 40 Atl. Rep. 1037 (Vt.).

Although the decisions upon the point are to some extent conflicting, this case is supported by the great weight of modern authority, and is correct historically and upon principle. Cf. *Earl of Shaftesbury's Case*, 8 How., St. Tr. 759, 771–5. See 11 HARV. LAW REV. 411.

EQUITY — DEAD BODIES. — Respondent owned a burial lot, and removed the remains of her step-son lawfully buried therein. Complainant, the heir of deceased, brings this bill to compel respondent to return the body to its former grave. On demurrer, *held*, that the bill states a good case. *Gardner* v. *Swan Point Cemetery*, 40 Atl. Rep. 871 (R. I.).

The case is in line with the generally accepted law on this point. Before interment, when there is discord among relatives of a deceased person as to the place of burial, the wishes of the deceased prevail if known, then those of the husband or wife, and finally of the heirs in order of consanguinity. *Larson* v. *Chase*, 47 Minn. 307. After interment the law will not encourage disturbance of the remains, and any of the heirs can prevent their removal. *Pierce* v. *Swan Point Cemetery*, 10 R. I. 227. Yet if interment has taken place without the consent of the person who has the right of determining the place of burial, such person can remove the body. *Weld* v. *Walker*, 130 Mass. 422. The heirs seem to be regarded as custodians of the remains of their ancestor. It is even held that the right to bring an action against any one who injures a grave-stone, passes, on the death of the person raising the stone, to the heir of the person over whose remains it stands, though he has no title to the land or to the stone itself. 2 Black. Comm. 428; *Mitchell* v. *Thorne*, 134 N. Y. 536.

EVIDENCE — COMPARISON OF HANDWRITING. — In an action on a note against the maker, other notes written by him were offered in evidence, solely for the purpose of comparing the handwriting in them with that in the note in controversy. *Held*, that the notes are inadmissible. *Wiedman* v. *Symes*, 74 N. W. Rep. 1008 (Mich.).

In England the introduction of specimens of handwriting for the purpose of comparison was always allowed in the ecclesiastical courts, even though such specimens were not otherwise admissible in the suit. *Beaumont* v. *Perkins*, 1 Phillim. 78. This was prohibited in common-law courts after the development of trial by jury, except in the case of ancient documents. *Taylor* v. *Cook*, 8 Price, 650; *Doe* v. *Suckermose*, 5 A. & E. 703. However, it is now permitted by statute in England and in several jurisdictions in this country. In the absence of such a statute, the authorities are divided. *Vinton* v. *Peck*, 14 Mich. 287; *Moody* v. *Rowell*, 17 Pick. 490. The principal case expresses the better view. The selection of such a standard of comparison is objectionable, since it may involve collateral issues, and may be unfair.

EVIDENCE — JOINT CRIME — ACQUITTAL OF ONE PRINCIPAL. — *Held*, that the acquittal of one of the principals in the crime of adultery does not bar the conviction of the other. *Solomon* v. *State*, 45 S. W. Rep. 706 (Tex., Cr. App.).

The case is *contra* to the weight of authority, but is correct on principle. *State* v. *Mainor*, 6 Ired. 340. The rule that the acquittal of one principal in the crime of adultery prevents the conviction of the other had its origin at the time when juries decided cases on their own knowledge. At such times both would naturally have to be convicted or acquitted together. At the present day, however, although it is impossible as a matter of fact that one should be guilty without the other, yet it is possible that the guilt of one should be established by evidence which, owing to the rules of evidence, would be inadmissible to prove the guilt of the other. It seems absurd that the principal whose guilt is clearly shown should escape simply because, owing to technical rules, the other cannot be convicted. It is better therefore to cut loose from this antiquated rule, which to-day has no satisfactory reason for existence. *Alonzo* v. *State*, 15 Tex. App. 378; *State* v. *Caldwell*, 8 Baxt. 576.

INSURANCE — BENEFIT ASSOCIATIONS — UNILATERAL CONTRACTS. — A Masonic benefit association brought suit to compel defendant, a member of the association, to pay an assessment. The association, on the death of one of its members, assessed the other members a fixed amount, which was turned over to the widow and children of the deceased member. Failure to pay such an assessment forfeited membership and all past payments and future insurance. *Held*, that the payment of these assessments cannot be enforced. *Lehman* v. *Clark*, 51 N. E. Rep. 222 (Ill.).

Certificates of membership in these associations are generally treated by the courts as policies of insurance, though they differ from other policies in having no fixed premiums, and no fixed amount to be paid to the beneficiary. *Commonwealth* v. *Wetherbee*, 105 Mass. 161. Membership imposes no liability to pay assessments, the association relying on the self-interest of its members, since failure to pay assessments forfeits membership. The court reasons that each payment completes a unilateral contract of insurance, which lasts until the next assessment becomes due. It has been held, however, that membership does impose such a liability. *Ellerbee* v. *Barney*, 119 Mo. 632. The rule in the principal case seems more in accordance with the probable intention of the parties; otherwise a member is under a perpetual liability to pay all future assessments, since the by-laws provide no means of withdrawing from membership except through forfeiture for nonpayment of assessments, and this operates only at the option of the association.

MUNICIPAL CORPORATIONS — OFFICERS DE FACTO. — In 1896 the town of Dover reorganized as a city, under a new general statute, and elected officers. In June, 1898 in *quo warranto* proceedings against these officers, the statute was declared unconstitutional. While proceedings in error on this decision were pending, the attorney-general

applied for *mandamus* to the former town officers, ordering them to resume their functions. *Held*, that the application be denied. *State* v. *Mayor, etc. of Town of Dover*, 41 Atl. Rep. 98 (N. J., Sup. Ct.).

The case shows the tendency of most courts to extend the doctrine of *de facto* corporations. It was recently decided in New Jersey that, though the statute under which a public corporation is organized be unconstitutional, its existence *de facto* cannot be questioned by a private individual. *Coast Co.* v. *Spring Lake*, 36 Atl. Rep. 21; see also 10 HARV. LAW REV. 452. The principal case goes further and holds that it cannot be questioned even by the State except on *quo warranto* proceedings directly against the supposed corporation or its officers. *Mandamus* to the *de jure* town officers could not issue until the *de facto* city officers had been actually ousted. See 2 Dillon, Munic. Corp., 4th ed., §§ 844, 894, 895.

PERSONS — PARENTS' RIGHT TO RECOVER FOR INJURY TO MINOR CHILD. — A minor child, while serving a penal sentence which would have expired in a short time, and before its majority, was injured by the negligent act of defendant. *Held*, that the parent may recover for the loss of the child's services. *Ames* v. *Atlanta Ry. Co.*, 31 S. E. Rep. 42 (Ga.).

The case is interesting because there is very little authority upon the question. It is generally held in this country that a parent may recover for the loss of the services of a minor child, although at the time of the injury the child, with the consent of its parents, was engaged in the service of another. *Bloggs* v. *Ilsey*, 127 Mass. 191. There seems to be a sufficient analogy between this class of cases and the principal case to lead to the same result. If, however, the child were imprisoned for a period which would not expire during its infancy, the parent could show no right to the services of the child, and a recovery should not be allowed. The case would then be similar to one in which the parent would be prevented from recovering for an injury to the child by reason of the fact that the child had been emancipated before the injury was suffered. Tiffany, Persons, 269.

PROPERTY — CHATTEL MORTGAGES — CONSIDERATION ILLEGAL IN PART. — *Held*, that a chattel mortgage given to secure two debts, one of which is illegal for usury, is not wholly void, but will stand as security for the valid debt. *Atkinson* v. *Burt*, 45 S. W. Rep. 987 (Ark.).

It is well settled that securities for the performance of obligations which are wholly illegal are not binding at law, even when given subsequently to the illegal transaction. *Fisher* v. *Bridges*, 3 E. & B. 642; *Paxton* v. *Popham*, 9 East, 407. The doctrine of the principal case, though difficult to support on the authorities cited, has been adopted by some courts. *Carradine* v. *Wilson*, 61 Miss. 573. The weight of authority, however, seems to hold that even the partial illegality of a debt vitiates for all purposes a mortgage given for its security. *Brigham* v. *Potter*, 14 Gray, 522; *Williams* v. *Fitzhugh*, 37 N. Y. 444. This view seems preferable, for the security has a distinctly illegal purpose if any part of the debt for which the security is given is tainted with illegality, and to hold an instrument binding as to its lawful purposes, but void as to its unlawful purposes, is at variance with the expressed intention of the parties.

PROPERTY — CONVEYANCES IN FRAUD OF CREDITORS — POWERS. — S., being in prosperous circumstances, with no intent to defraud either existing or subsequent creditors, made a voluntary conveyance of real estate in fee. On the next day, the grantee reconveyed to S., in trust for S. for life, with powers of aliening, leasing, mortgaging, or devising; and, if not thus disposed of, remainder in trust for the two daughters of S. and their heirs. *Held*, that, although the deeds were duly recorded, they may be set aside by subsequent creditors. *Scott* v. *Keane*, 40 Atl. Rep. 1070 (Md.).

A conveyance, valid as against existing creditors, can be avoided by subsequent creditors only when made with intent to defraud them. *Kane* v. *Roberts*, 40 Md. 590. Here, the transaction was admitted to be in good faith; but nevertheless the ample powers reserved were held conclusive evidence of actual fraud. This, is, perhaps, going beyond the existing authorities; but the decision, although possibly judicial legislation, is not unlikely to meet with approval. But another, and, it seems, an untenable position was also taken. If the deed had been upheld, only the life estate would have been liable for the debts of S., who was yet practically owner of the property; and therefore the case was declared to fall within the rule which forbids a man, while retaining the benefits of ownership, to place his property beyond the reach of his creditors. *In re Pearson*, 3 Ch. D. 807; *Brown* v. *McGill*, 39 Atl. Rep. 613 (Md.). This reasoning confuses conveyances in fraud of creditors and provisions in restraint of alienation. Gray, Restraints on Alienation, 2d ed., § 91. In the one case the whole deed is void, but only as regards creditors; in the other, the unlawful provisions are invaiid as against all the world, but the remainder of the deed is unimpeachable.

The authorities do not fully discuss how far the rights of a creditor to avoid a prior fraudulent deed are affected by notice, at the time of contracting his claim, of the earlier conveyance. It seems, however, that actual notice will prevent him from attacking even a deed fraudulent in fact. *Monroe* v. *Smith*, 79 Pa. St. 459. The principal case reaches a different result when the notice is merely constructive, although the fraud is also only an inference of law.

PROPERTY — COVENANT IN LEASE — DUMPOR'S CASE. — The plaintiff leased land for a term of years, the lessee covenanting not to assign without the written consent of the lessor. One assignment was made with the plaintiff's authority. The assignee in turn assigned the term, but without consulting the plaintiff. *Held*, that the last assignment was valid; for after the first authorized assignment the covenant was destroyed. *Reid* v. *Weissner & Sons Brewing Co.*, 40 Atl. Rep. 877 (Md.). See NOTES.

PROPERTY — NUISANCE — NOMINAL DAMAGES. — In an action for maintenance of a nuisance, *held*, that a verdict for nominal damages, in the absence of proof of special damage, is proper. *Farley* v. *Gate City Gas Co.*, 31 S. E. 193 (Ga.).

The case follows the rule, generally accepted in this country, that an action on the case may be maintained to prevent the acquirement of a prescriptive right, although no actual damage has resulted from the alleged nuisance. *Bolivar Mfg. Co.* v. *Neponset Mfg. Co.*, 16 Pick. 247. In England it is held that an action is maintainable only when actual damage has been suffered, until which time, in consequence, a prescriptive right does not begin to run. *Sturges* v. *Bridgman*, 11 Ch. D. 852. The American doctrine is more satisfactory, as under the English law an adjoining landowner may, after a lapse of twenty years, require the destruction of permanent works which he must have known at the time of their erection would annoy him in the future use of his property.

QUASI-CONTRACTS — WILFUL BREACH OF CONTRACT. — The plaintiff contracted to put plumbing in the defendant's house. Having partly completed the work, he refused without good excuse to proceed. *Held*, that the plaintiff cannot recover on a *quantum meruit* for work done. *Cochran* v. *Balfe*, 54 Pac. Rep. 399 (Colo., C. A.).

The principal case follows the weight of authority. *Turner* v. *Robinson*, 5 B. & Ad. 789; *Stark* v. *Parker*, 19 Mass. 267; *Larkin* v. *Buck*, 11 Oh. St. 561. Many States, however, allow the plaintiff this action. *Britton* v. *Turner*, 6 N. H. 481; *Duncan* v. *Baker*, 21 Kan. 107. The latter line of decisions establishes the better principle if its application is restricted to cases where the plaintiff is in default for the breach of a condition implied in law. The courts have failed to distinguish between such cases and cases where the condition is express. In the latter the plaintiff has wilfully deprived himself of his action on the contract, and there is no ground for allowing him to invoke the aid of the equitable principles of quasi-contract. But if the condition is one implied in law, the defendant can only escape performance of his contractual obligation on equitable grounds, and therefore should not be allowed to retain the benefit of the plaintiff's labor without making fair recompense. See 8 HARV. LAW REV. 364.

SURETYSHIP — RIGHTS OF CO-SURETY — SUBROGATION. — *Held*, that where one of two sureties on a note is obliged to pay the note, he is entitled to put in his claim against the insolvent estate of his deceased co-surety for the full amount of the note, and to receive dividends until reimbursed to the extent of one-half the debt. *Pace* v. *Pace*, 30 S. E. Rep. 361 (Va.).

The decision is eminently sound. What few adjudications are to be found upon the precise question involved are to the same effect, with the exception of *Institution* v. *Hathaway*, 134 Mass. 69. A practical and it seems a conclusive objection to a contrary view is that it would make the amount of the burden which the insolvent surety must bear depend upon whether the holder of the original obligation or the co-surety proceed against the surety's estate. That such a result is not necessary upon principle is clearly shown by Professor Ames in 5 HARV. LAW REV. 406. It is generally held that one partner cannot prove in bankruptcy against another for the full amount of a partnership obligation which he was compelled to discharge. *Ex parte Smith*, Buck, 492. But, upon principle, the doctrine of subrogation should be applied as in the cases between co-sureties. The decisions that a joint obligor on a bond may prove against a co-obligor in bankruptcy as a specialty debtor, illustrate still more strikingly the inconsistency of the courts. *Litterdale* v. *Robinson*, 12 Wheat. 594. See also *Robertson* v. *Trigg*, 32 Gratt. 76. Why the obligor is subrogated to the creditor's rights as regards the nature of the debt but not as regards the amount is not made apparent.

SURETYSHIP — STATUTE OF LIMITATIONS. — In consideration of a promise by the plaintiff bank to honor an overdraft by a third party, defendant guaranteed repayment, together with interest, to be compounded every six months. *Held*, that though action for the principal sum is barred by the Statute of Limitations, plaintiff can recover for

the interest that has accrued within six years. *Parr's Banking Co.* v. *Yates*, [1898] 2 Q. B. 460.

The decision has an odd look, as the result is that in such a case a guarantor's liability may continue forever, without further action on his part. The argument for the decision is that defendant's undertaking really consists of two distinct parts, a guarantee of the principal advanced, and a guarantee of the payment of compound interest. On the latter promise a right of action would accrue for each instalment of interest as it became due. *Hamilton* v. *Van Rensselaer*, 43 Barb. 117. It is hard to see why the guarantor's undertaking is any more separable into two parts than that of the party guaranteed. Yet if the latter's promise had been to repay the advance with simple interest at a stated rate, it appears he could not be held liable for interest after the principal had been barred by the statute. *Hollis* v. *Palmer*, 2 Bing. N. C. 713. It is at least fairly arguable, however, that where the interest is compound and each instalment as it accrues becomes a new principal, the rule should be different from that applied where the interest is simple.

TORTS — MALICIOUS INTERFERENCE WITH CONTRACTS — PLEADING. — The declaration alleged that the defendants induced one M. to break a contract with the plaintiff, by false and malicious statements made for the purpose of depriving the plaintiff of the benefits of his contract. On demurrer, *held*, that the declaration is insufficient for not setting out the false statements. *May* v. *Wood*, 51 N. E. R. 191 (Mass.). Three justices dissenting.

In an action for slander, the substance of the false statements must be set out in the declaration. Newell, Slander and Libel, 595 *et seq.* In the principal case the majority held that even in an action for maliciously inducing a person to break his contract, when false statements are alleged, they must be set forth in substance and proved. On the contrary, it is argued in the dissenting opinion that the gist of the action is the malicious injury without justifiable cause, by inducing a person to break a contract, and therefore that the statements used for that purpose are immaterial whether true or false. See 8 HARV. LAW REV. 1; *Lumley* v. *Gye*, 2 E. & B. 216; *Walker* v. *Cronin*, 107 Mass. 555. It seems evident, therefore, that although the case turned on a question of pleading, the point on which the court really divided was a question of substantive law, the majority regarding the false statements in the declaration as the gist of the action, and the minority, the malicious injury by inducing a person to break a contract. While the decision does not expressly impeach the doctrine of *Lumley* v. *Gye*, it clearly shows a disinclination to affirm it. See 11 HARVARD LAW REVIEW, 449.

TORTS — INTERFERENCE WITH BUSINESS — TRADES UNIONS. — Defendants, officers of a trade union, caused certain of their members to abandon the service of the plaintiff because he had not joined an association recognized by the defendants' society. *Held*, that this was tortious conduct, and the defendants should be enjoined from further interference. *Coons* v. *Chrystee*, 53 N. Y. Supp. 668 (Sup. Ct., Spec. Term, N. Y. Co.).

The facts in this case are reported but briefly and insufficiently. It does not appear whether the workmen were caused to break a contract, or merely to exercise a right they had of leaving at any moment. If the former was the case, waiving the question of the form of remedy, the defendants' act was a tort, a contract right being a property right. *Lumley* v. *Gye*, 2 E. & B. 216. If the latter was true, service terminable at will not being a property right, the defendants, according to the doctrine of *Allen* v. *Flood*, [1898] App. Cas. 1, were liable only if the means used were unlawful — which does not appear to be the fact in this case. Before *Allen* v. *Flood*, *supra*, it was generally held that where one person intentionally caused pecuniary damage to another, a good cause of action was made out unless the former showed some ground of justification. *Mogul Steamship Co.* v. *McGregor*, [1892] App. Cas. 25. Competition was always regarded as a justification, and in the principal case there was competition, for the conflict between trades unions and employers is competition as much as is the struggle between individual parties for employment or trade. Holmes, J., in *Vegelahn* v. *Gunter*, 167 Mass. 92.

TORTS — LANDLORD AND TENANT — OVERFLOWING CISTERN. — On an upper floor of certain premises defendant constructed a cistern, from which plaintiff, who afterwards became tenant of a lower floor, received water. Defendant used due care in employing a plumber to repair a leak in the cistern, but, through the negligence of the plumber, water escaped and damaged plaintiff's goods. *Held*, that plaintiff cannot recover. *Blake* v. *Woolf*, [1898] 2 Q. B. 426.

In *Rylands* v. *Fletcher*, L. R. 3 H. L. 360, the rule was laid down that "the person who for his own purposes brings on his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it in at his peril, and if he does not do so is *prima facie* answerable for all the damage which is the natural consequence of its escape." In every case since there has been a manifest inclination to discover some-

thing in the facts to take the case out of the rule. The court distinguish the principal case from *Rylands* v. *Fletcher*, *supra*, because here the injury resulted from a natural user of the land, while there it was caused by a non-natural user. This seems like drawing the line between a large reservoir and a small one. The court made another distinction between the cases, in that here, as the plaintiff became tenant after the cistern was constructed, and as he used water from it, he must be taken to have consented to its being on the premises. *Anderson* v. *Oppenheimer*, 5 Q. B. D. 602. The numerous exceptions have left but little of the original rule.

TORTS — LEGAL CAUSE. — Defendants were owners of a bridge which they negligently allowed to be in bad repair. The plaintiff in Maine was travelling for pleasure on Sunday, in violation of a statute of that State, and his horse was injured by a defect in the defendants' bridge. *Held*, that the plaintiff cannot recover. *Beacham* v. *Proprietors of Portsmouth Bridge*, 40 Atl. Rep. 1066 (N. H.).

The ground taken by the court is that the plaintiff's wrong necessarily contributed to the injury, the same doctrine having been held in *Cratty* v. *City of Bangor*, 57 Me. 423. *Lyons* v. *Desotelle*, 124 Mass. 387, *accord*. The weight of authority, however, is contrary, and it is generally held on a similar state of facts that the breach of the Sunday law is a mere condition under which the accident happens, rather than a contributing cause. *Sutton* v. *Town of Wauwatosa*, 29 Wis. 21. This view is certainly a more correct interpretation of the facts, for the accident would have been as likely to happen on any other day in the week. It is now provided by a recent Maine statute that the law against Sunday travelling shall not affect the right or remedy of a party arising from an injury received on that day.

TORTS — LORD CAMPBELL'S ACT — JURISDICTION. — Plaintiff's son, a subject of Belgium, being on the high seas, in a Belgian vessel, was killed in a collision caused by the negligent management of a steamship belonging to defendants. *Held*, that plaintiff has no right of action under Lord Campbell's Act. *Adam* v. *The British and Foreign Steamship Co.*, [1898] 2 Q. B. 430.

The question is largely, if not entirely, one of construction. For, admitting the power of Parliament to give a right of action for a cause arising outside the jurisdiction, a statute should not be construed thus to contravene the principles of international comity without the clearest language. For this reason the case is preferable to a prior contrary decision. *The Explorer*, L. R. 3 A. & E. 289. The American authorities agree that no action will lie under statutes similar to Lord Campbell's Act where the place of killing is outside the State. *Whitford* v. *Panama R. R. Co.*, 23 N. Y. 465. Whether, under such circumstances, recovery may be had in a domestic forum under a foreign statute is a mooted question. *Dennick* v. *Central R. R. Co.*, 103 U. S. 11; *Ash* v. *Baltimore & Ohio R. R. Co.*, 72 Md. 144. Nothing in the principal case runs counter to the proposition that the statute applies for the benefit of aliens where the killing is within the jurisdiction. *Philpott* v. *Mo. Pac. Ry. Co.*, 85 Mo. 164. Upon the whole subject, see Tiffany, Death by Wrongful Act, §§ 195 *et seq.*

REVIEWS.

THE CONFLICT OF LAWS IN THE PROVINCE OF QUEBEC. By E. Lafleur. Montreal. C. Theoret. 1898. pp. xvi, 267.

This interesting book is the result of a course of lectures delivered by the author as Professor of International Law in McGill University. He treats of the law of the Province of Quebec alone; a law derived from the pre-Napoleonic French law, and found in the Provincial Codes in the decisions of the Provincial Courts, and in the decisions, on appeal from Quebec, of the Supreme Court of Canada and of the Privy Council. The author cites few authorities except such decisions and the commentaries of the French jurists, — a proper course, since "Conflict of Laws" is a branch of the municipal law, and decisions of a State where a different system of law prevails can be no safe guide to the law of Quebec. For the same reason, the Quebec decisions cannot be authoritative with us.